

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cory Lorenz  
Kelly Thomas n/k/a Lorenz

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-33221  
-----

TO: Cory Lorenz and Kelly Thomas n/k/a Lorenz, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Wells Fargo Bank, N.A., ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **9:30 am on September 1, 2004**, in Courtroom 228A, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on August 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on May 28, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtors, subject to a mortgage to Movant.

6. Debtors above-named are the owners of certain real property located at 1022 North 3rd Street, Saint James, MN 56081, legally described as follows, to-wit:

West 100 Feet of South 75 Feet of North 225 Feet of Lot Four (4) in Block "G" of Armstrong's Park Addition to the City of St. James, Watonwan County, Minnesota.

7. The indebtedness of Cory Lorenz and Kelly Thomas n/k/a Lorenz is evidenced by a Promissory Note and Mortgage dated August 30, 1999, filed of record in the Watonwan County Recorder's office on August 31, 1999, and recorded as Document No. File#131 Card#3425. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors have failed to pay monthly mortgage payments since June 1, 2004, and are in default in the amount of \$2,010.95 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtors have failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is approximately \$47,200.00.

10. The Debtors have estimated the value of the homestead as \$50,000.00, and accordingly, Debtors have limited equity in the premises and, presuming typical selling costs, have no equity in the property and therefore cause exists to find lack of adequate protection.

11. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 11, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cory Lorenz  
Kelly Thomas

AFFIDAVIT OF PETITIONER

Debtors

Chapter 7, Case No. 04-33221  
-----

STATE OF SOUTH CAROLINA        )

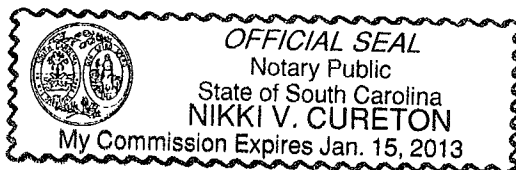
COUNTY OF York        )

Karan Abenethy, being first duly sworn, deposes and states on oath that she/he is employed by Wells Fargo Bank, N.A., the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Karan Abenethy

Subscribed and sworn to before me this  
4<sup>th</sup> day of August, 2004.

Nikki V. Cureton  
Notary Public



MENT OF MORTGAGE

Form No. 47-M

OSWALD PUBLISHING CO., NEW ULM, MN (WATERLOO-722-0001) (12-18-86)  
Minnesota Uniform Conveyancing Blanks (1985)

poration or Partnership

Assignment Of Mortgage

✓#181865 ✓ X

Office of County Recorder  
County of Watonwan Minnesota

I hereby certify that the within instrument was filed in this  
office for record on the 13th day of September  
A.D. 1999 at 2:40 o'clock P. M. at  
File # 131 CARD # 3526

Nancy Kunkel County Recorder

By MICROFILMED Deputy

pd Bank

(reserved for recording data)

Date: August 30, 1999

FOR VALUABLE CONSIDERATION,

Citizens State Bank of St. James

a Corporation under the laws of State of Minnesota

Assignor (whether one or more), hereby sells, assigns and transfers to  
Norwest Mortgage Inc.

Assignee (whether one or more), the Assignor's interest in the Mortgage dated August 30, 1999,  
executed by Cory N. Lorenz, a single person and Kelly D. Thomas, a single  
person

as Mortgagor, to Citizens State Bank of St. James

as Mortgagee, and filed for record August 31, 1999, as Document Number 181764

(or in File 131 of XXXX Card 3425), in the Office of the (County Recorder)

XXXX of Watonwan County, Minnesota, together with all right and interest  
in the note and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its  
successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of  
Forty-seven Thousand Four Hundred Seventy Dollars and no/100

----- (\$47,470.00) ----- DOLLARS, with interest thereon from  
August 30, 1999, and that Assignor has good right to sell, assign and transfer the same.

ASSIGNOR

CITIZENS STATE BANK OF ST. JAMES

By Marion R. Edgar  
Its Cashier

By James D. Paulson  
Its Vice President

STATE OF MINNESOTA  
COUNTY OF WATONWAN } ss.

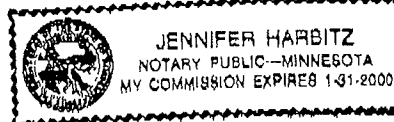
The foregoing instrument was acknowledged before me this 30 day of August, 1999,  
by Marion R. Edgar and James D. Paulson,  
the Cashier and Vice President  
of Citizens State Bank of St. James, a Corporation  
under the laws of State of Minnesota, on behalf of the Board of Directors

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Citizens State Bank of St. James  
123 Armstrong Blvd. South  
P.O. Box 107  
St. James, MN 56081

Jennifer Harbitz  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



Aug 31 1999 No. 8417  
Registration Tax hereon of  
109.25 Dollars Paid  
By Carol Johnson County Treasurer  
By Donald Kullberg Deputy  
By James Bush County Auditor Deputy

✓ #181764/10X  
Office of County Recorder  
County of Watonwan Minnesota  
I hereby certify that the within instrument was filed in this  
office for record on the 31st day of AUGUST  
A.D. 1999 at 2:50 o'clock P. M. at  
File #131 CARD #3425  
By Daniel Kunkel County Recorder  
MICROFILMED  
By pd Bank Deputy

(Space Above This Line For Recording Data)

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on AUGUST 30, 1999. The mortgagor  
CORY N. LORENZ, A SINGLE PERSON AND KELLY D. THOMAS, A SINGLE PERSON  
("Borrower"). This Security Instrument is given to CITIZENS STATE BANK OF ST JAMES  
MINNESOTA, which is organized and existing under the laws of THE STATE OF  
MINNESOTA, and whose address is  
23 ARMSTRONG BLVD SOUTH PO BOX 107, SAINT JAMES, MN 56081  
("Lender"). Borrower owes Lender the principal sum of FORTY SEVEN THOUSAND FOUR HUNDRED SEVENTY  
AND NO/100\*\*\*\*\* Dollars (U.S. \$ 47,470.00). This debt is  
evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly  
payments, with the full debt, if not paid earlier, due and payable on SEPTEMBER 1, 2029 and for  
interest at the yearly rate of 8.500 percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment  
of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the  
performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose,  
Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located  
WATONWAN County Minnesota: WEST 100 FEET OF  
SOUTH 75 FEET OF NORTH 225 FEET OF LOT FOUR (4), IN BLOCK "G" OF ARMSTRONG'S PARK  
ADDITION TO THE CITY OF ST. JAMES, WATONWAN COUNTY, MINNESOTA.

which has the address of 1022 3RD STREET NORTH ST. JAMES  
Minnesota 56081 ("Property Address");  
(Zip Code)

Form 3024 9/90



DV2A0

MINNESOTA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Wells Systems, Inc., St. Cloud, MN Form MD-1-MN 5/8/87

(page 1 of 6)

20

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cory Lorenz  
Kelly Thomas n/k/a Lorenz

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-33221  
-----

Wells Fargo Bank, N.A. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, perfected mortgage on real property owned by the Debtors. On the date of filing, the Debtors were delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$2,010.95.

**ARGUMENT**

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtors in this case have failed to make payments required by the note and mortgage for a period of more than 4 months. Debtors have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrtcy. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtors have no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrtcy. D. N. H. 1983). In this case the balance due Movant is approximately \$47,200.00. The value of the property is approximately \$50,000.00. Clearly, the Debtors have no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

**CONCLUSION**

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtors have no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: August 11, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Cory Lorenz  
Kelly Thomas n/k/a Lorenz

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-33221  
-----

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 11, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Charles Ries  
Chapter 7 Trustee  
P.O. Box 7  
Mankato, MN 56002-0007

Mark C. Halverson  
Halverson & Associates  
PO Box 3544  
Mankato, MN 56002

Cory Lorenz  
Kelly Thomas n/k/a Lorenz  
1022 North 3rd Street  
Saint James, MN 56081

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re:

Cory Lorenz  
Kelly Thomas n/k/a Lorenz

ORDER

Debtors.

Chapter 7, Case No. 04-33221  
-----

The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., (“Movant”), pursuant to 11 U.S.C. Section 362 on September 1, 2004, at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

West 100 Feet of South 75 Feet of North 225 Feet of Lot Four (4) in Block "G" of  
Armstrong's Park Addition to the City of St. James, Watonwan County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court